

January 7, 1999

Colonel Leo W. Haseman, Director
Division of Enforcement
Minnesota Department
of Natural Resources
500 Lafayette Road
St. Paul, Minnesota 55155-4047

RE: In the Matter of the Appeal of the Trespass Citation Issued to John
Patrick Beckstrom, OAH Docket No. 11-2000-12001-2; Trespass Civil
Citation No. 20385

Dear Colonel Haseman:

The above-entitled matter came on for a prehearing telephone conference call on December 18, 1998, at 2:00 p.m. Participating in the telephone conference call were the undersigned Administrative Law Judge, Conservation Officer Scott W. Fritz, and John Patrick Beckstrom. All participants agreed that no formal hearing would be needed and that I could decide the matter based upon what was discussed during the telephone conference call. I have reviewed the facts and the law, and have determined that the citation should be DISMISSED because there has not been an adequate showing that Mr. Beckstrom took a wild animal with a firearm within 500 feet of an occupied building without the written permission of the owner, occupant, or lessee. The basis for this recommendation is set forth below.

The facts in this matter are found to be as follows. On November 14, 1998, Mr. Beckstrom was deer hunting in Rice County with a friend. They sought and were granted permission to hunt on land adjacent to a farm occupied by Stacey and Brian Gillen. The Gillens own the house and are in the process of buying the remainder of the property from Mr. Gillen's father. Mr. Beckstrom knew that the Gillens hunt on their property but do not allow anyone else to hunt there. Mr. Beckstrom's friend shot a buck on the property on which they had permission to hunt. The wounded deer moved toward the Gillen's property. Mr. Beckstrom ran down the fence line to try to turn the deer back toward his hunting partner. When

he came over a small rise, he saw the deer standing approximately ten feet from the fence line with his head down. Mr. Beckstrom shot at the deer two times and hit him once. The shots were fired when the deer was still standing on the property adjacent to the Gillen's property, and neither shot was fired in the direction of the Gillen's property. The deer crossed the fence line, then stopped and fell near the grove of trees on the Gillen's property. Mr. Beckstrom unloaded his gun and walked with his partner toward the Gillen's house to ask for permission to retrieve the deer. Mrs. Gillen told them to get off the property and said that they would have to talk to her husband when he came in for lunch. Mr. Beckstrom told Mrs. Gillen his name. He and his partner drove to town for a snack and intended to return to the Gillen farm around noon.

Mr. Beckstrom found out later in the morning from a friend that the game warden was looking for Mr. Beckstrom and his hunting partner. After they were unable to find the Conservation Officer in the area in question, they drove to the law enforcement center in Faribault. The dispatcher reached the Conservation Officer by radio and arranged for a meeting by the Gillen's farm.

Ms. Gillen had told the Conservation Officer that she heard a shot, looked out of the window of her home, saw a deer running across her hay field towards her building site, heard two more shots, and then saw the deer fall down in the hay field. If the shots occurred as described by Ms. Gillen, the deer was shot within 500 feet of her home and also within 500 feet of buildings occupied by livestock.

Mr. Beckstrom and his partner examined the area with the Conservation Officer. Mr. Beckstrom's partner showed the Conservation Officer the empty shells and blood trail from where the deer had initially been shot. Mr. Beckstrom showed the Conservation Officer the empty shells from his shots and also the wads from the shells and hair from the deer. All of these were located on the property adjoining the Gillen's farm, where Mr. Beckstrom and his partner had permission to hunt. Mr. Beckstrom told the Conservation Officer that he shot at the deer two times before it crossed onto the Gillen's hay field. They examined the deer and determined that the bullet fired by Mr. Beckstrom entered the body from the left rear quarter.

The Conservation Officer issued a trespass citation based upon Ms. Gillen's description of where she saw the deer when she heard the two shots. The Conservation Officer also believed that the fact that Mr. Beckstrom's bullet

entered the deer's left rear quarter was consistent with Ms. Gillen's statement. Mr. Beckstrom decided to appeal the citation because he heard that Mr. Gillen was accusing him of "shooting up" his house and being a "poacher." As reflected in the investigative report issued by the Conservation Officer, the citation was based upon an alleged violation of Minn. Stat. § 97B.001, subd. 7. That statute provides, in pertinent part, that "[a] person may not take a wild animal with a firearm within 500 feet of a building occupied by a human or livestock without the written permission of the owner, occupant, or lessee . . . on another person's private land" See Minn. Stat. § 97B.001, sub. 7(a).

Based upon a careful consideration of all of the information provided by the parties, the Administrative Law Judge credits Mr. Beckstrom's version of the events of November 14. Despite being given the opportunity to hold a formal hearing and call additional witnesses, including Ms. Gillen, the Conservation Officer and Mr. Beckstrom chose to go forward during the telephone conference call. The testimony Mr. Beckstrom gave during the conference call was the same as the information he provided to the Conservation Officer on November 14 and supplied in his appeal letter dated November 20, 1998, thereby suggesting that this is not a story that he concocted to try to get out of the citation. On all of these occasions, Mr. Beckstrom adamantly denied that he fired any shots in the direction of the Gillen's property. Although Mr. Beckstrom acknowledged that he was not positive of the deer's motions, he testified that the deer saw him before he fired the shots and may have twisted to the right just before he fired. The Conservation Officer agreed that such a motion on the part of the deer would satisfactorily explain the left rear bullet entry. The Conservation Officer further admitted that the location of the shells and wads was consistent with the explanation provided by Mr. Beckstrom. It is noteworthy that Mr. Beckstrom voluntarily provided his name to Ms. Gillen and took the initiative to find the Conservation Officer on November 14 once he heard that the Officer was looking for him. The Conservation Officer agreed that Mr. Beckstrom was congenial and helpful during the investigation of this matter.

Under the circumstances, I recommend that the citation be dismissed. The evidence presented demonstrates that Mr. Beckstrom did not, in fact, take a wild animal with a firearm within 500 feet of a building occupied by a human or livestock without the written permission of the occupant, as proscribed by Minn. Stat. § 97B.001, subd. 7(a) (1998).

The law provides that the final decision in this matter must be made by the Commissioner (or his designee). The law further requires that the Commissioner

Colonel Leo W. Haseman
January 7, 1999

Page Four

must wait at least five days after receipt of this recommendation before he makes that final decision and permits Mr. Beckstrom to make any comments to him on the recommendation within that five-day period. The Commissioner must send a copy of his final decision to Mr. Beckstrom.

Respectfully submitted,

BARBARA L. NEILSON
Administrative Law Judge
Telephone: 612/341-7604

Enclosure

cc: John Beckstrom
Scott Fritz